

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: Cathy Sheldon; David J. Sheldon

CASE 41G-0545-R-2022
41G 9608-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 9608-00 appeared in the 41G Preliminary Decree. The claim received a DNRC issue remark.

2. The DNRC issue remark that appeared on claim 41G 9608-00 states:

THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE INDICATING THE POINT OF DIVERSION AND PLACE OF USE MAY BE INCORRECT. THE POINT OF DIVERSION AND PLACE OF USE MAY BE SEC 23, TWP 02S RGE 06W MADISON COUNTY AND S2NENE, SEC 23 TWP 02S RGE 06W, MADISON COUNTY.

The issue remark was placed on the claim because a late objection was filed to claim 41G 9608-00 on July 29, 1993 by Gordon K. Clare and Mary J. Clare (attached to this order). The late objection states that the correct place of use and point of diversion is located in the SWNENE of Section 23, T2S, R6W. The late objection includes a map depicting the location of the well and the place of use.

3. The point of diversion and place of use for claim 41G 9608-00 was decreed in the Basin 41G Preliminary Decree as:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		NENESW	23	2S	6W	MADISON
	<u>Subdivision:</u>	JEFFERSON ACRES - IRON ROD UNI TRACT/LOT: 1 BLOCK: 3					

The map provided with the late objection indicates that the SWNENE of Section 23, T2S, R6W is a more accurate legal land description for the point of diversion.

4. The claimants were provided an opportunity to comment on the issue remark and the late objection. The order setting filing deadline stated that if nothing were filed by the deadline, the court would conclude that the claimant agrees with the information in the issue remark and the point of diversion and place of use would be corrected. Nothing was filed by the deadline. The point of diversion and place of use legal land descriptions should be modified to the SWNENE of Section 23, T2S, R6W.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remark appearing on claim 41G 9608-00 does not overcome the prima facie status of the claim.

3. If a claimant or objector fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors may include dismissal of the objector from the proceeding. Rule 22, W.R.Adj.R. Claimant failed to respond to the court's order setting filing deadline. The claim will be modified to conform with the best information before the court.

RECOMMENDATIONS

1. Claim 41G 9608-00 should be modified as provided above.
2. The issue remark should be removed from claim 41G 9608-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Cathy Sheldon
1245 Water Line Road
Butte, MT 59701-7024

David J. Sheldon
21 Iron Rod Road
Silver Star, MT 59751

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 9608-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID J SHELDON
21 IRON ROD RD
SILVER STAR, MT 59751

CATHY SHELDON
1245 WATER LINE RD
BUTTE, MT 59701 7024

Priority Date: MAY 26, 1972

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 6.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	23	2S	6W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: JEFFERSON ACRES - IRON ROD UNI TRACT/LOT: 1 BLOCK: 3

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SWNE	23	2S	6W	MADISON

Subdivision: JEFFERSON ACRES - IRON ROD UNI TRACT/LOT: 1 BLOCK: 3

Total: 1.00

FILED

JUL 29 1993

STATE OF MONTANA)
) ss.
COUNTY OF Madison)

Montana Water Court

AFFIDAVIT

1. I/We GORDON K. & MARY J. CLARE
are the owner(s) of water right number 41G W009608-00

2. The place of use prior to July 1, 1973 is:

<u>ACRES</u>	<u>QTR.SEC.</u>	<u>SEC.</u>	<u>TWP.</u>	<u>RGE.</u>	<u>COUNTY</u>
	SWNE	23	2 S	6 W	MADISON

3. The point of diversion is located in the SWNE of Section 23 Twp 2 South Rge 6 West.

4. This water is used exclusively on the above described lands, and does not overlap into the property of another.

5. A correct map describing the above is attached.

6. I/We hereby swear that the information contained in this affidavit is true.

<u>Gordon K. Clare</u>	<u>7-19-93</u>
Owner	Date
<u>Mary J. Clare</u>	<u>7-19-93</u>
Owner	Date

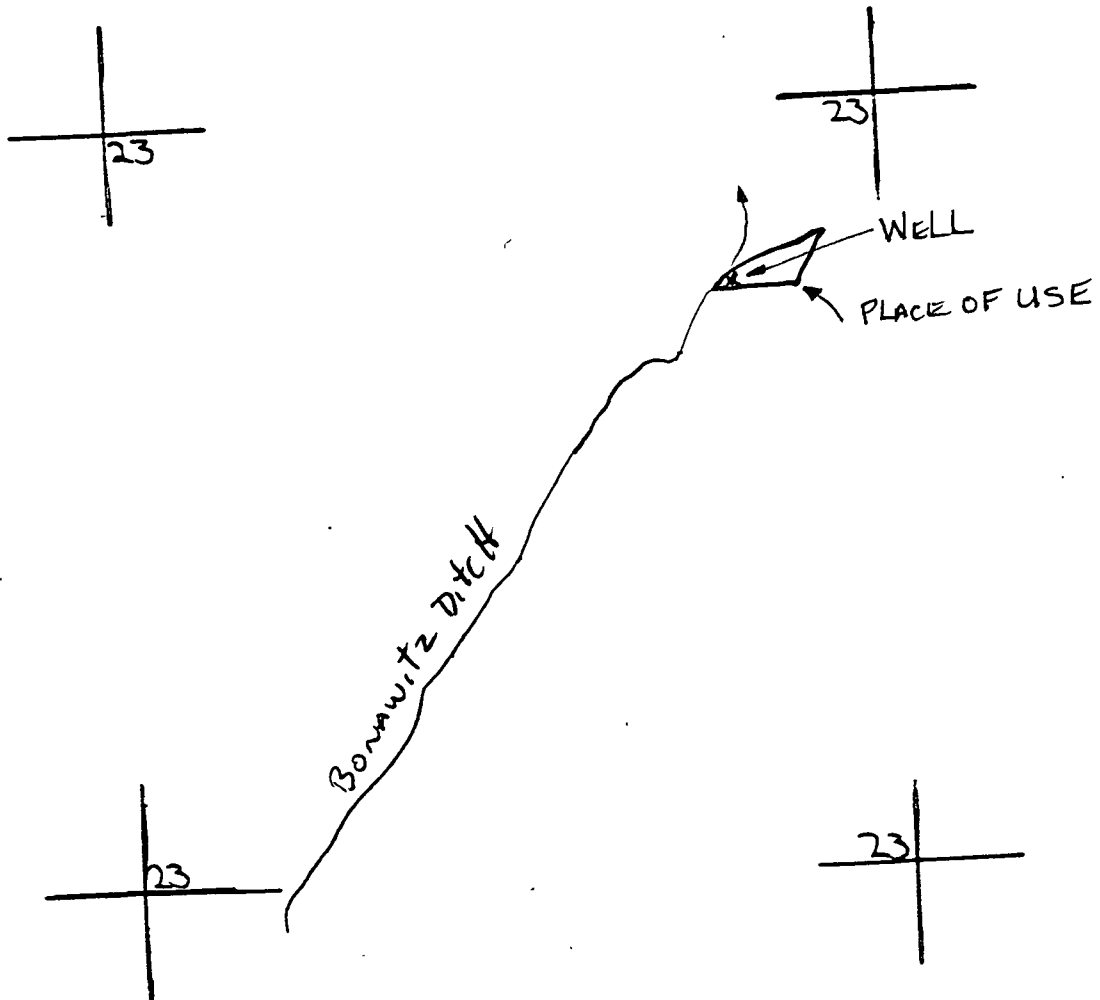
Subscribed and Sworn to before me this 19th day of July ~~xx~~, 1993.

(NOTARY SEAL)

Mary E. Clark
Notary Public
Residing at: Twin Bridges
My Commission Expires: 10-4-94

FILMED

Gordon K. & Mary J. Clare
41G -W-009608-00
S2NENE 23 02S 06W MADISON



AERIAL PHOTOGRAPH 178-126
DATED 09/07/79

SCALE 4" = 1 MILE

FILMED